

Notice of Allowability

Application No.

10/725,117

Examiner

Catherine Simone

Applicant(s)

MAUK ET AL.

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to appeal brief, filed 8/28/06.
2. ☒ The allowed claim(s) is/are 1,7,8,10,12,16,19 and 20.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Doug Winters on 9/22/06 and on 10/16/06.

The application has been amended as follows:

Cancel claims 3-5, 9, 13, 14, 23, 26 and 28-34.

In Specification, paragraph 1, line 1, delete "continuation-in-part" and insert --continuation--.

REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance:

The base claim is claim 1.

The present claims are deemed allowable over the references Kupits (US 3,129,194) and Eiden (US 4,336,293), since the combination fails to disclose or render obvious the uniquely distinct features of the floor covering having "a profile with elevations and recesses" and "the average spacing between profile peaks in the centerline is more than about 200 μm and less than about 1000 μm , and the difference in height between the elevations and the recesses is from about 20 μm to about 200 μm ".

While Kupits discloses a floor covering comprising a composition including a binder, a plasticizer and a substance capable of migration within the composition, wherein the binder comprises polyvinyl chloride (PVC), the plasticizer is in an amount of at least about 12 wt% based

on PVC, and the substance capable of migration is present in an amount of from about 1.5 wt% to about 15 wt% based on the binder, Kupits fails to anticipate or render obvious the distinct features of the floor covering having “a profile with elevations and recesses” and “the average spacing between profile peaks in the centerline is more than about 200 μm and less than about 1000 μm , and the difference in height between the elevations and the recesses is from about 20 μm to about 200 μm ”.

While Eiden teaches a floor covering having a profile with elevations and recesses, Eiden fails to teach the average spacing between profile peaks in the centerline being more than about 200 μm and less than about 1000 μm , and the difference in height between the elevations and the recesses being from about 20 μm to about 200 μm . Therefore, Kupits and Eiden are not combinable. The reasons why they are not combinable is clearly pointed out in Applicant's arguments on pages 11-14 of the Appeal Brief filed 8/28/06.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine Simone whose telephone number is (571)272-1501. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CAS
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Art Unit 1772
September 24, 2006

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